Filed 4/12/10 In re C.C. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re C.C., a Person Coming Under the Juvenile Court Law.	
SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Respondent, v. J.C., Defendant and Appellant.	C062137 (Super. Ct. No. JD225391)

J.C. (appellant), the mother of C.C. (the minor), appeals from the juvenile court's order denying appellant's request for modification of the order prohibiting contact between appellant and the minor. (Welf. & Inst. Code, §§ 388, 395; undesignated statutory references that follow are to the Welfare and Institutions Code.) Appellant contends the court denied her an evidentiary hearing on her modification request, and that there was insufficient evidence to support the continuation of the no-contact order. We affirm the order.

FACTS AND PROCEEDINGS

In February 2007, the Sacramento County Department of Health and Human Services (the Department) removed the 14-year-old minor from parental custody due to domestic violence and appellant's failure to protect the minor from methamphetamine manufacturing in the home or to provide the minor with care and support. The minor was placed with Tammy R., a non-relative extended family member. The court ordered reunification services for appellant and the presumed father, Kevin C., and granted both parents regular visitation with the minor. Kevin C. died unexpectedly on October 7, 2007, during the pendency of the proceedings. Appellant failed to reunify and the services were terminated in March 2008.

In June 2008, the court established a guardianship as the permanent plan for the minor and ordered visitation between appellant and the minor, as arranged with the guardian. Thereafter, counsel for the minor filed a petition for modification seeking to prohibit contact between appellant and the minor. At a September 2008 hearing, the court granted the petition pending the next review hearing. Appellant filed an appeal from that order.

At the December 2008 review hearing, the juvenile court ruled the no-contact order should continue "until further order of the Court." Appellant filed an appeal from that order as well.

We consolidated appellant's two appeals, and affirmed the juvenile court's orders prohibiting contact between appellant and the minor.

On April 14, 2009, appellant filed a petition for modification (§ 388) requesting that the no-contact order be modified to allow conjoint counseling between appellant and the minor. The petition stated there were changed circumstances arising from appellant's completion of an eight-week women's empowerment program which included classes in "anger management, gratitude, goal development, women's history, poetry, journaling, interpersonal communication skills, women's health education, housing solutions, etc.," and job readiness classes dealing with "time management, resume writing, interviewing skills, writing a master application, and how to get and keep a job." The petition also stated that appellant had been "attending weekly one-on-one counseling sessions at . . . a mental health center" for four months prior to the hearing, and that she attended a group to deal with her depression and "has had stable housing . . . since mid-November 2008." The petition urged that the requested change would be in the minor's best interest because "[appellant] believes it would benefit [the minor] to express her feelings to her about the past openly and without outside influences. [Appellant] believes it would benefit [the minor] to experience a relationship with [appellant] and to form her own opinions without outside influence. [Appellant] believes this would help [the minor] to heal and have a happier and healthier future."

The following day, the court issued a preliminary order stating that it had made no initial findings because it wanted to "hear from counsel [and] see [the] court report and discover [the] minor's wishes."

The post-permanency review report stated that both the guardian and the Department wanted to maintain the no-contact order because there had been no change in circumstances since issuance of that order. The minor did not wish to have any contact with appellant because the minor "does not like her." The minor's therapist reiterated that the no-contact order was "in the best interest of the [minor]'s psychological and emotional well-being," and indicated that the minor had previously expressed that she "doesn't want anything to do with [appellant] until she turns 18 years old . . . ." The report noted that, as of April 13, 2009, appellant had not made any inquiries regarding the minor's welfare and could not be reached by mail or telephone. The report noted further that appellant "has a history of significant substance abuse and mental health history and to this date, [appellant] has not provided any documentation to the Department as to successful rehabilitation."

Appellant's section 388 petition was heard at the May 20, 2009 review hearing. Counsel for the Department stated that the minor had informed the social worker she "does not want a relationship with [appellant], [and] she does not want to do joint therapy as well." Counsel also stated he had been informed by the social worker that the minor's therapist felt

"it would be detrimental to revoke the no contact order," and that the minor "has also told [the therapist] that she does not want a relationship with [appellant]."

Both the guardian and minor's counsel opposed conjoint counseling based on the minor's expressed desire not to have contact with appellant.

Appellant's counsel acknowledged the opinion of the minor's therapist that the no-contact order was in the best interest of the minor, but questioned whether that opinion was "current or not." Counsel also indicated that appellant had recently seen the minor "by happenstance" and that the minor "did inform her mother that she did want to begin conjoint counseling with her but just wanted to take it very, very slowly." Counsel argued that there had been a change in circumstances, "as [appellant] has completed yet another program on her own." In response to that representation, minor's counsel informed the court that the minor was "very angry and upset for about a week" after running into appellant "because she does not wish to see [appellant] at all at this time."

The court denied the petition without prejudice, finding that even if there had been a change in circumstances, it would not be in the minor's best interest to grant appellant's petition.

Appellant filed a timely notice of appeal.

DISCUSSION

I

The Trial Court's Reliance on Unsworn Testimony

Appellant contends the trial court summarily denied her section 388 petition without giving her an opportunity to present evidence, relying instead on the unsworn statements of counsel and the minor's guardian. We disagree.

A parent may bring a petition for modification of any order of the juvenile court pursuant to section 388 based on new evidence or a showing of changed circumstances. To establish the right to an evidentiary hearing on the petition, it must include facts that make a prima facie showing of a change in circumstances or new evidence and that "the best interests of the child may be promoted by the proposed change of order." (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 672; see also *In re Zachary G.* (1999) 77 Cal.App.4th 799, 806; *In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1414; Cal. Rules of Court, rule 5.570(d).)

"'There are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the children. [Citation.] If the liberally construed allegations of the petition do not show changed circumstances such that the child's best interests will be promoted by the proposed change of order, the dependency court need not order a hearing. [Citation.] We review the

juvenile court's summary denial of a section 388 petition for abuse of discretion.'" (*In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1079, quoting *In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

Here, the juvenile court gave appellant the benefit of the doubt as to a prima facie showing, affording her a hearing she likely would not otherwise have been entitled based on the meager showing in her petition that the requested modification was in the minor's best interest. The court's initial order made clear that it was focused on the best interest of the minor and that it would expect all parties to be prepared to present any information related thereto.

At the hearing, the court, having read the report and appellant's sworn petition, heard statements from the guardian and counsel. With exceptions not relevant here, proof at a section 388 hearing "may be by declaration and other documentary evidence, or by testimony, or both, at the discretion of the court." (Cal. Rules of Court, rule 5.570(h)(2).) Here, counsel for the Department conveyed to the court the minor's statements to the social worker that she did not want a relationship with appellant and did not want to participate in conjoint counseling. Counsel also conveyed the opinion of the minor's therapist that the minor did not want a relationship with appellant and that "it would be detrimental to revoke the no[-]contact order."

The guardian informed the court that the minor decided not to attend the hearing because she did not "want to come and deal

with this situation," and that the minor did not wish to participate in conjoint counseling "at this stage." The minor's counsel informed the court of the minor's objection to conjoint counseling, and the fact that the minor "does not wish to have contact with [appellant]."

Appellant claims the court declined to allow her to present evidence. That is not correct. Appellant was present at the hearing and did not object to the procedure. She was free to present evidence in support of her petition, but elected not to do so. Instead, appellant argued, through her counsel, that circumstances had changed due to appellant's completion of "yet another program" referring apparently to certificates evidencing appellant's completion of the eight-week Women's Empowerment program and the 30-day substance abuse counseling program, which were attached to the petition. Counsel argued conjoint counseling was in the minor's best interest because the minor had informed appellant she wanted to begin conjoint counseling but "take it very, very slowly," and because it "wouldn't hurt for [the minor] to be able to talk to [appellant] about her problems and issues with [appellant] in a therapeutic setting." Appellant does not identify any additional evidence she was prevented from offering, nor does she identify any additional evidence she would offer if afforded the opportunity to do so now.

Appellant argues the court's preliminary decision not to make "initial findings" rendered the scope of the proceedings at the hearing ambiguous as to whether or not evidence would be

taken. We disagree. After reviewing the petition, the court issued an order stating that while it was making no initial findings, it wanted to "hear from counsel [and] see [the] court report and discover [the] minor's wishes." As we previously stated, it was clear from that order that the court was seeking evidence on whether conjoint counseling would be in the minor's best interest. At the hearing, the court considered the report and the statements from the guardian and counsel, including counsel for appellant. The court concluded that, even assuming a change in circumstances, the requested change would not be in the minor's best interest, and denied the petition without prejudice.

We reject appellant's contention that the juvenile court summarily denied her petition without holding a proper evidentiary hearing. We find no error.

II

Sufficiency of the Evidence

Appellant also contends there was insufficient evidence to support the court's continuation of the no-contact order. We note that, to the extent appellant's claim is in part directed at the court's original no-contact order, we need not address that portion of her argument, as we previously affirmed the juvenile court's original order on appeal. In any event, we again disagree.

The best interests of the child are of paramount consideration when the petition is brought after termination of reunification services. (*In re Stephanie M.* (1994) 7 Cal.4th

295, 317.) In assessing the best interests of the child, the juvenile court looks not to the parents' interests in reunification but to the needs of the child for permanence and stability. (*Ibid.; In re Marilyn H.* (1993) 5 Cal.4th 295, 309.)

Here, just as in the September 2008 hearing on the modification petition and the December 2008 review hearing, the juvenile court granted the no-contact order based on appellant's sworn modification petition, the social worker's report, evidence of the minor's wishes and other information in the record. Here, just as before, appellant failed to object to the court's procedure and has forfeited any claim of error. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293; *In re C.J.W., supra,* 157 Cal.App.4th at p. 1081.)

In any event, even assuming a timely objection, there is sufficient evidence in the record to support denial of appellant's petition. While appellant's efforts to participate in services are laudable, she completed a two-month women's empowerment course and participated in 18 mental health counseling sessions. In short, the change, albeit positive, is in its infancy. Moreover, even assuming as the court did that circumstances had indeed changed, appellant has provided nothing other than her own opinion that conjoint counseling would be in the minor's best interest. Indeed, all evidence is to the contrary given the minor's expressions to her guardian, her therapist, and her counsel that she does not want to have contact with appellant at this time.

There is ample evidence in the record to support the court's denial of appellant's request for modification.

DISPOSITION

The juvenile court's order denying the Welfare and Institutions Code section 388 petition is affirmed.

HULL, J.

We concur:

BLEASE, Acting P. J.

SIMS, J.